

FILED

JUN 23 1999

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JIMMIE DAVIS

Petitioner,

Case No. CV-N-99-137-ECR(PHA)

MOTION FOR EVIDENTIARY HEARING

v.

JOHN IGNACIO, et al.,
Respondents

Comes now petitioner in proper person now respectfully submits a motion for evidentiary hearing on petitioners remainitgg two claims Ground 2 Groun 3. This motion is made and based on the points and authorities submitted herewith motion. Petitioner has diligently sought for 11 years to justice filing numrous motions and issues returning to the state court on his own accored three times to exhaust all issues to elemnate the problem of clogging up the honarable federal court with frivoloas issues which cost the court time and money Petitioner now submits two grounds for relief which are upheld and unrepelled by the record. Petitioner now submits a motion for an an evidentiary hearing to be allowed to show that a true unjustice has occured.

POINTS AND AUTHORITIES

CREECH V. ARAVE 947F2d 873 (9th cir 1991) stated this circuit required remand for an evidentiary hearing due to the uncertainty whether the defendant had been apprised of the intent element of the crime to which he pleaded guilty. U.S. V. Bigman 906F2d 392 (9th cir 1990) 5, Criminal law 997.16(5) Evidentiary hearing was so apprised because the record does not conclucively establish that Bigman was so apprised of voluntary and

1 involuntary manslaughter we must vacate the district court
2 summary denial of Bigmans claim and remand for evidentiary hearing
3 hearing . Sober 644 F2d at 810, Shah v. U.S. 878F.2d 1158 (9th cir
4 (9th cir) (6) In the future the court would be well advised to
5 establish on record that the defendant understands the intent
6 element of the crime to which a plea of guilty is entered
7 See eg., Williams v Raines 783F2d 774, 775-76 (9th cir 1986).

8 For a proper plea colloquy in Nevada see Walker v. DEEDS
9 50F3d 670 (9th cir 1995) Do you understand the nature of the
10 charge contained in the amended information"
11 10 lines later; the court asks the defence counsel did you advise
12 the defendant of the elements of the crime with which he is
13 charged in the amended information the burden of proof required
14 by the state in prosecuting the matter and the defence if any
15 that may be available to him?

16 FOR THE REASONS SET FORTH AND ABOVE PETITIONER ASKS THE
17 HONORABLE COURT GRANT PETITIONER AN EVIDENTIARY HEARING AND
18 ANY OTHER RELIEF IT DEEMS NECESSARY.

19 RESPECTFULLY SUBMITTED,

20 JIMMIE DAVIS 27362
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CERTIFICATE OF MAILING

JIMMIE DAVIS SAYS:

On the 21 day of JUNE 1999, I deposited in the
NEVADA STATE PRISON MAIL ONE ORIGINAL AND COPYS TO THE BELOW
LISTED ADDRESSES: MOTION FOR EVIDENTIARY HEARING

~~REDACTED~~
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